

E-Filed: December 18, 2013

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ERIC BENEDICT, ET AL.,

No. C13-00119 LHK (HRL)

Plaintiffs,

**INTERIM ORDER ON DISCOVERY
DISPUTE JOINT REPORT #2**

v.

HEWLETT-PACKARD COMPANY,

[Re: Docket No. 103]

Defendant.

BACKGROUND

Eric Benedict, alleging he was misclassified as an exempt employee when he worked for Hewlett-Packard Company ("HP") as a Technical Solutions Consultant, sues HP for unpaid overtime.

While employed by HP, Benedict used an HP-issued laptop computer as one of the primary tools for doing his job. He also routinely entered and saved personal information on it. Before turning in the laptop upon his resignation from HP, and desiring - reportedly - to save the personal information, he made a mirror image of the laptop hard drive and kept it.

Some four or five months into the litigation over overtime wages, HP learned about the existence of the mirror image. Reacting with anger and distress over what it saw as the theft of its property (some of it "confidential"), HP demanded its immediate return. Plaintiff's counsel demurred because of the personal information that was not readily separable from the HP data and over which, it was alleged, Benedict had a privacy interest. Unsatisfied, HP moved for leave to file

1 counterclaims for a host of wrongs, including misappropriation of trade secrets and conversion, and
2 also sought immediate injunctive relief to get back its property (Dkts. 41, 46, 47).

3 In response to this flurry of filings by HP, the presiding judge issued an Order to Meet and
4 Confer (Dkt. 49), which advised that it had no time at present to devote to this new dispute. It
5 recommended that the parties hand over the hard drive to an independent vendor and stipulate to a
6 protocol under which a third party neutral would review the hard drive and segregate data in which
7 plaintiff may have a privacy or ownership interest from data that is HP's. The parties were ordered
8 to figure out how to implement the court's solution and report back.

9 The parties did meet and negotiate over a protocol (Dkts. 50, 55). Later, the presiding judge
10 weighed in and imposed certain conditions and requirements (Dkt. 60). The parties haggled some
11 more and finally reached a Supplemental Stipulation Re: Data Segregation (Dkt. 92). For present
12 purposes it is sufficient to say the protocol instructed the third party vendor (SFLData), using search
13 terms provided by the parties, to create a log of all files on the drive and designate them as either
14 HP's, Benedict's, or "unknown". HP's files would go to HP; Benedict's to Benedict; and
15 disposition of the "unknown" - if the parties could not agree - would be tossed back in the court's
16 lap. The concluding paragraph of the Stipulation said: "Nothing herein limits any party's right to
17 seek any additional discovery, including but not limited to discovery relating to any Device
18 provided to Vendor or material contained thereon"

19 Some months have now passed, and the court does not know how far along the data
20 segregation process has progressed.

21 CURRENT DISPUTE

22 Without waiting for the data segregation process to be completed, and relying on the just
23 quoted language about the right to seek additional discovery, HP submitted Requests for Production
24 of Documents (RFPs) to plaintiff. It asked for all documents referring or relating to plaintiff's work
25 for HP: i.e. time spent; time off; hours worked; tasks done; clients contacted; directions received;
26 directions given; job duties; training; developing, modifying or debugging computers; non-work
27 during working hours; meal breaks; rest breaks; and so on and on.

1 Plaintiff's counsel represents that all responsive material has been produced except for what
2 is on the mirror image hard drive. (Actually, there are apparently several devices that plaintiff has
3 loaded with some or all of the data from the HP laptop, but the court believes all are in the hands of
4 SFLData.) Plaintiff's counsel says any responsive material in the files identified as Benedict's will
5 be turned over once the data segregation process is completed. Defense counsel says they want the
6 information now. In fact, they contend that the entire hard drive is responsive to their RFPs, and so
7 plaintiff should retrieve it from SFLData and turn it over.

8 INTERIM ORDER

9 No later than December 27, 2013 the parties will meet and confer (in person meeting is
10 encouraged but not required) and jointly file a Supplement to Discovery Dispute Joint Report #2,
11 not to exceed 6 pages, that addresses the following:

12 1. Exactly how far along is the data segregation process; what remains to be done; and when
13 is completion expected?

14 2. If HP can rightfully demand that plaintiff turn over the mirror image of his HP laptop by
15 simply propounding to him garden variety RFPs about his employment-time activities, then what is
16 the point of the data segregation process that the presiding judge initiated? (This court has no desire
17 to trump a procedure the presiding judge put into motion, and certainly not before the procedure
18 plays out.) Also, the court finds it curious that in a carefully crafted protocol for a somewhat
19 cumbersome segregation process the parties would include language that, by authorizing "additional
20 discovery", would allow circumvention of the very process that is the subject of the protocol. So,
21 how else should the "additional discovery" language be interpreted?

22 **IT IS SO ORDERED.**

23 Dated: December 18, 2013

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HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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